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**If You Build It, Will They Come?****How Baseball's Antitrust Exemption Impacts Franchise Relocation**

*Christopher O'Shea\**

## I. Introduction

*“The pleasure of rooting for Goliath is that you can expect to win. The pleasure of rooting for David is that, while you don’t know what to expect, you stand at least a chance of being inspired.”<sup>1</sup>*

It is no secret that owners of professional sporting franchises are living in a golden age of skyrocketing revenue and global excitement for sport. Baseball in particular has seen its revenue grow for fourteen consecutive years, approaching nearly ten billion dollars in 2016.<sup>2</sup> However, while some large market teams like those in Chicago, New York, and Los Angeles are able to rake in millions of dollars in revenue, teams in smaller markets remain on the outside looking in. If the stars are aligned, some of these poorer teams are able to catch lightning in a bottle and achieve contender status, such as the small market Kansas City Royals from 2014-15, who reached consecutive World Series before winning in 2015, all with a payroll in the bottom half of the league.<sup>3</sup>

However, for small market teams, this success always seems short lived. The same Royals who captivated baseball as a small market contender saw their performance plummet in 2016 when the team dealt with injuries to core players and won fourteen fewer games than they

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<sup>1</sup> Michael Lewis, *MONEYBALL: THE ART OF WINNING AN UNFAIR GAME* 158 (2003). (The 2002 Oakland Athletics had one of the lowest payrolls in baseball, yet won more games than the New York Yankees. With their small budget, the “David’s” of the Oakland A’s nearly took down the “Goliaths”, the New York Yankees in the playoffs, before losing in 5 games.)

<sup>2</sup> Maury Brown, *MLB Sees Record Revenue Approaching \$10 Billion For 2016*, *Forbes* (Dec. 5, 2016), <http://www.forbes.com/sites/maurybrown/2016/12/05/mlb-sees-record-revenues-approaching-10-billion-for-2016/#3d45d2818452>

<sup>3</sup> Barry Petchesky, *2015 Payrolls and Salaries for every MLB Team*, *Deadspin* (Apr. 1 2015), <http://deadspin.com/2015-payrolls-and-salaries-for-every-mlb-team-1695040045>

did the season prior, missing the playoffs.<sup>4</sup> Out of the four major North American sports (football, basketball, hockey, and baseball), baseball is the lone sport that operates without a salary cap.<sup>5</sup> The lack of a salary cap means that once a player reaches six years of service time spent in the league (after having a restriction on their salary during that time by the team who originally drafted or signed him), they have the opportunity to offer their services to play for any of the thirty teams in baseball for however high of a salary their agents are able to negotiate.<sup>6</sup>

After six year of service time, players' salaries can skyrocket, making it difficult for small market teams to keep their star players from leaving to another team.<sup>7</sup> The quintessential example of a star player's salary increase exponentially occurred after the 2000 season, where Alex Rodriguez set, at the time, the record for the largest free agent contract ever given to a baseball player.<sup>8</sup> Because of this small window of cost controlled certainty of player salaries, small market teams such as those in Tampa Bay and Oakland are hard pressed to create a dynasty of successful teams year in and year out. Having cost-controlled players can lead to prolonged success, which the sport saw in the 1990's when the Atlanta Braves won fourteen straight division titles, and the New York Yankees won the World Series four times in five years.<sup>9</sup>

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<sup>4</sup> 2016 MLB Standings, Baseball-Reference (Last Accessed May 2, 2017). <http://www.baseball-reference.com/leagues/MLB/2016-standings.shtml>

<sup>5</sup> Dayn Perry, *No, Baseball (still) doesn't need a salary cap*, CBS Sports, (December 5, 2013). (The strength of MLB's player union has prevented ownership from achieving a hard salary cap, which would suppress player salaries and increase revenue for owners) <http://www.cbssports.com/mlb/news/no-baseball-still-doesnt-need-a-salary-cap/>

<sup>6</sup> Joey Nowak, *Everything you need to know about service time*, MLB.com (Apr. 1, 2015) <http://m.mlb.com/news/article/115853014/everything-you-need-to-know-about-service-time/>

<sup>7</sup> *Id.*

<sup>8</sup> Thomas Neuman, *Fifteen things to know on 15<sup>th</sup> anniversary of Rangers' \$252 million megadeal with A-Rod*, ESPN (Dec. 11, 2015) [http://www.espn.com/mlb/story/\\_/id/14330504/alex-rodriguez-252-million-contract-texas-rangers-remains-landmark-15th-anniversary](http://www.espn.com/mlb/story/_/id/14330504/alex-rodriguez-252-million-contract-texas-rangers-remains-landmark-15th-anniversary).

<sup>9</sup> Mark Bowman, *Braves have set lofty benchmark*, MLB.com (Sep. 13, 2006) <http://m.mlb.com/news/article/1659755/>

Simply put, these poorer teams in smaller markets do not have the same revenue streams that would allow them to give these huge contract offers to free agents, much less have the ability to afford to keep their own players once they become free agents. Loyalty only goes so far in professional sports. Teams operate first and foremost as a business, and as much as players may pretend that they play for “the love of the game,” the stark reality of the fact is that they play for the money. No matter how many years or how successful a player was with one franchise, when they see the dollar signs flashing in front of their eyes, it’s extremely difficult to say no to an enormous contract offer from a large market team. Former Cy Young award winner, and current Arizona Diamondback Zack Greinke confirmed this suspicion in 2013, saying that, “I could play for the worst team if they paid the most.”<sup>10</sup>

For a large market team, a big contract that loses its value to the team either due to a decline in performance, injury, or ineffectiveness is not the end of the world. However, when a small market team allocates anywhere from 20%-30% of their payroll to one player, ineffectiveness can hamstring that team’s payroll for years.<sup>11</sup> Because of these restraints in place for the smaller market teams, their owners consistently drum up public support for one source they believe will fix their problems: a new, publicly funded stadium that will increase a team’s revenue.<sup>12</sup>

It has become commonplace in the life of an American sports fan to turn on SportsCenter hoping to see highlights of last night’s game, only to inevitably hear the news of how a professional team, and its billionaire owner, are crying broke claiming they need hundreds of

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<sup>10</sup> David Brown, *Zack Greinke: I could play for the worst team if they paid the most* Yahoo Sports (Feb. 26, 2013) <https://sports.yahoo.com/blogs/mlb-big-league-stew/zack-greinke-could-play-worst-team-paid-most-163824712--mlb.html>

<sup>11</sup> Jonah Keri, *Baseball’s Worst Contracts*, Grantland (Feb. 12, 2014) <http://grantland.com/features/mlb-worst-contracts-alex-rodriguez-albert-pujols/>

millions of dollars in public funding to pay for a new stadium. Usually, if the public funding isn't given to them for this new stadium, they will threaten to abandon their perfectly viable stadium and rabid fan base for greener pastures.<sup>13</sup>

This occurred as recently as in 2013 with the Chicago Cubs, when their inability to renovate Wrigley Field with public funds resulted in a veiled threat to Chicago politicians that the team was exploring potentially leaving Wrigleyville for the city of Rosemont.<sup>14</sup> Down south in Atlanta, for example, the proud hosts of the 1996 Olympics decided that after less than twenty years of baseball being played in Turner Field that crumbling infrastructure and outdated amenities necessitated 1.1 billion dollars in tax-payer money to pay for a new stadium for the Atlanta Braves to remain a “viable professional sports franchise.”<sup>15</sup>

In the football world, the St. Louis Rams, after twenty years of playing in what has been consistently rated one of the worst stadiums in professional sports due to cramped seating and poor views of the field,<sup>16</sup> deserted the St. Louis metropolitan area for the bright lights of Hollywood. The start of the 2016 season was met with great fanfare for the new Los Angeles Rams franchise when they drew a raucous crowd of 70,000 fans on Monday Night Football to start the 2016 season.<sup>17</sup> As happy as the fans of Los Angeles are to have a young, exciting team to root for, one only has to take a short drive north to look at another stadium situation play out in the city of Oakland.

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<sup>13</sup> Dayn Perry, *Rays' owner: If no new stadium, team to be sold and likely moved* CBS Sports (Dec. 9, 2014), <http://www.cbssports.com/mlb/news/rays-owner-if-no-new-stadium-team-to-be-sold-and-likely-moved/>

<sup>14</sup> Associated Press, *Cubs owner threatens to move team out of Wrigley*, CBS News (May 1, 2013), <http://www.cbsnews.com/news/cubs-owner-threatens-to-move-team-out-of-wrigley/>.

<sup>15</sup> Dan Klepal, *Infrastructure support for Braves stadium will cost millions*, Atlanta Journal-Constitution. (November 15, 2015). <http://www.myajc.com/news/news/local-govt-politics/infrastructure-support-for-braves-stadium-will-cos/npNGt/>.

<sup>16</sup> Nick Carbone, *Top 10 Worst Stadiums in U.S.*, TIME, (May 9, 2012), <http://keepingscore.blogs.time.com/2012/05/10/top-10-worst-stadiums-in-the-u-s/slide/edward-jones-dome-st-louis/>.

<sup>17</sup> Victor Mather, *Back in Los Angeles, Rams Lose in Rare N.F.L. Shutout*, N.Y. Times. (Sept. 13, 2016), <http://www.nytimes.com/2016/09/14/sports/football/los-angeles-rams-san-francisco-49ers-shutout.html>

The Oakland Athletics, once a highly successful franchise who brought World Championships to their city four times in eighteen years during the 1970's,<sup>18</sup> will play in a stadium shared with the Oakland Raiders through 2018. Unfortunately for the city of Oakland, things are not as exciting as their competitors in Los Angeles. The "O.co Coliseum", one of the oldest stadiums in professional sports, has experienced poor maintenance, ancient amenities, and sewage issues that have resulted in waste overflowing in the pipes and into the players' clubhouse.<sup>19</sup>

Since the Athletics share their stadium with another franchise, and especially because it is in such poor condition compared to other teams in the league, Oakland's ability to field a competitive payroll in comparison to the remainder of the league has contributed to low attendance, and consistently one of the lowest payrolls in baseball.<sup>20</sup> With a situation this dire for the city of Oakland, one would expect that both franchises would simply wait until their lease with the stadium expires, and move to a luxurious, modern stadium which likely would draw huge crowds and create an economic revival for a downtrodden urban area.<sup>21</sup> Unfortunately, these two Oakland franchises are not afforded the same luxury of their counterparts in St. Louis and Atlanta.

This begs the question: why are some professional sports franchises able to move whenever, and wherever they please, even if it is in the territory of their competitors?

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<sup>18</sup> Oakland Athletics Team History, Baseball Reference <http://www.baseball-reference.com/teams/OAK/>

<sup>19</sup> Karl Buscheck, *Oakland A's: Bud Selig Calls Coliseum a 'Pit', as 'Perfect Storm' Awaits*, Bleacher Rep. (Sept. 25, 2013), <http://bleacherreport.com/articles/1787591-oakland-as-bud-selig-calls-coliseum-a-pit-as-perfect-storm-awaits>

<sup>20</sup> MLB Team Payrolls, <http://www.stevetheump.com/Payrolls.htm>

<sup>21</sup> Joe Nocera, *N.F.L. Stadiums in Las Vegas May Be an Ego Boost, but Not an Economic One*, N.Y. Times, (Oct. 21, 2016) [http://www.nytimes.com/2016/10/22/sports/football/las-vegas-raiders-nfl-stadium.html?\\_r0](http://www.nytimes.com/2016/10/22/sports/football/las-vegas-raiders-nfl-stadium.html?_r0) (Explaining how new stadiums do not bring an economic benefit to a new city, and that they only create temporary jobs).

This article will explore this issue and propose solutions to why some professional franchises are able to relocate into new stadiums publically funded through taxpayer dollars, and why some teams are unable to do so.

First, this article will discuss the legislative history of baseball's antitrust exemption, examining how the effects of this precedent have impacted a team's ability to move their franchises into new stadiums and territories. Second, this article will examine the similarities and differences between the struggles the Tampa Bay Rays faced when baseball expanded in the 1990s, and how issues with their stadium have adversely impacted their ability to field a contending team. Additionally, this article will look at the franchise relocation of the Montreal Expos, and how that move impacted the Oakland A's failed bid to move to San Jose. Finally, this article will evaluate what the future of stadium relocation holds for major league franchises, and how teams with stadium problems such as the Oakland A's and Tampa Bay Rays negatively impact baseball's parity between winning and losing teams.

## **II. Background**

The Sherman Antitrust Act<sup>22</sup> was codified in 1890 with the goal of prohibiting certain business activities, which federal government regulators deemed to be anti-competitive. The economic rationale behind the Act is that when firms (businesses, companies, etc.) compete, consumers are able to purchase goods from a wider selection, with varying levels of quality at the lowest possible prices. Accordingly, these protections were put in place to protect consumers, and ensure economic prosperity through competitive business markets. Baseball received this exemption to operate in an anti-competitive manner in 1922.<sup>23</sup>

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<sup>22</sup> Sherman Anti-Trust Act, ch. 647 26 Stat. 209 (1890) (codified as amended at 15 U.S.C.S. §1-7 (2012)).

<sup>23</sup> David Greenberg, *Baseball's Con Game*, Slate (Jul. 19, 2002)

[http://www.slate.com/articles/news\\_and\\_politics/history\\_lesson/2002/07/baseballs\\_con\\_game.html](http://www.slate.com/articles/news_and_politics/history_lesson/2002/07/baseballs_con_game.html)



As part of the antitrust exemption, owners of Major League Baseball teams have the ability to block the move of another, competing franchise into their designated territory on the basis of wanting to protect a team's market share in that area.<sup>24</sup> Additionally, the sport of baseball operates as a joint venture, or a "partnership with a purpose," which allows baseball teams to produce a product that they could not market on their own: baseball games between two competing teams. In any either type of market, the way baseball operates would be a violation of the Act, and would therefore be deemed "anti-competitive".

Further, because this exemption is in place, teams are free to operate how they choose. In the beginning part of baseball's history, this exemption created a highly unique system that allowed the game to develop freely, in a manner that would be considered anti-competitive in any other market in the United States. The impact of this has created a host of intricacies and nuances that has impacted the way that Major league Baseball is played, and run, as a business.

#### **A. Baseball's Antitrust Judicial History**

Baseball's antitrust exemption came into fruition with the historical, impactful decision of *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball*.<sup>25</sup> The President of the Baltimore Terrapins, a member of the defunct Federal League, which folded in 1915, refused a buyout of his franchise because the team insisted on having a baseball franchise in the city of Baltimore.<sup>26</sup> The owner of the Terrapins sued the National and American Leagues claiming that they were conspiring to monopolize baseball by destroying the Federal League.<sup>27</sup>

Justice Oliver Wendell Holmes, in a unanimous opinion, held that because the inherent nature of the business of baseball was to provide an exhibition of games between teams, baseball

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<sup>24</sup> Wendy Thurm, *MLB, The Giants, and the law job the A's...again* Deadspin (Jan. 16, 2015) <http://deadspin.com/mlb-the-giants-and-the-law-job-the-as-again-1679969965>

<sup>25</sup> 259 U.S. 200 (1922).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

was an intrastate “affair.”<sup>28</sup> This meant that baseball could not be subjected to interstate commerce regulations, and therefore baseball was deemed outside the scope of Sherman Antitrust Act.<sup>29</sup> The court mistakenly determined that there was something inherently local about Major League Baseball, which later proved to be untrue. It may have looked intrastate in nature due to teams operating in different cities in different states, but in 1922, none of these things mattered. Because the court saw baseball only as an exhibition of local teams, operating locally, the precedent was set and baseball’s exemption from antitrust law still stands today.<sup>30</sup>

Baseball operated as an antitrust exempt business for the next three decades before its exemption was challenged again in a *per curiam* brief by the Supreme Court in *Toolson v. New York Yankees*.<sup>31</sup> The Court held in *Toolson* that the main holding in *Federal Baseball* would still apply, and that baseball was for the business of “providing public baseball games for profit between clubs of professional baseball players, and was thus not within the scope of federal antitrust laws.”<sup>32</sup> The Court, utilizing *stare decisis*, determined that in the thirty plus years since the *Federal Baseball* decision, baseball had developed its rules and operations based on that holding, creating settled expectations that would be disturbed if the Court decided to make changes thirty years later.<sup>33</sup>

The Court felt that because professional baseball franchises had made large financial investments on the basis of what they understood the law to be at this time, unilaterally changing these expectations decades later would disrupt the way the game was operated.<sup>34</sup> Following *Federal Baseball*, the *Toolson* Court held that unilaterally changing these settled expectations

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 208.

<sup>30</sup> *Id.*

<sup>31</sup> 346 U.S. 356 (1953) (per curium).

<sup>32</sup> *Id.* at 357.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

would be improper.<sup>35</sup> The Court indicated that if changes were to be made regarding baseball's anti-trust exemption, it should come from Congress, not the judiciary.<sup>36</sup> Based on the fact that baseball team owners had spent the past three decades developing a business model that was exempt from antitrust laws, the Court stated that, "We think that if there are evils in this field which now warrant application to it of the antitrust laws, it should be by legislation."<sup>37</sup>

The final chapter of baseball's antitrust judicial trilogy came in *Flood v. Kuhn*.<sup>38</sup> By 1972, baseball was the clear outlier in American sports, as all other professional sports had been subjected to antitrust scrutiny. The seminal case arose after St. Louis Cardinals outfielder Curtis Flood was traded to the Philadelphia Phillies against his wishes.<sup>39</sup> Flood, not wishing to play in Philadelphia, sued Major League Baseball, stating to the Commissioner, "I do not regard myself as a piece of property to be bought or sold."<sup>40</sup> In his lawsuit, Flood challenged the reserve clause system that had been in baseball since its creation.

Under this reserve clause rule, a player was team's property, bound to them for life by this clause, operating almost in an indentured servitude.<sup>41</sup> The clause "reserved" a player's service to the team that had originally signed him.<sup>42</sup> Additionally, because every major league team used the same standard form contract with all incoming baseball players, Flood had no opportunity to circumvent the system that was restricting his ability to choose where he would play; his only way out of the contract was to be released, retire, or challenge the system in courts,

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> 407 U.S. 258 (1972).

<sup>39</sup> *Id.* at 260

<sup>40</sup> Allen Barra: *How Curt Flood Changed Baseball and Killed his Career in the Process*, The Atlantic, (Jul. 12, 2011) <http://www.theatlantic.com/entertainment/archive/2011/07/how-curt-flood-changed-baseball-and-killed-his-career-in-the-process/241783/>

<sup>41</sup> *Reserve Clause*, Baseball-Reference (last accessed May 2, 2017) [http://www.baseball-reference.com/bullpen/Reserve\\_clause](http://www.baseball-reference.com/bullpen/Reserve_clause)

<sup>42</sup> *Id.*

because the standard contract and reserve system operated in perpetuity.<sup>43</sup> At that time, no other player had ever attempted to challenge the reserve clause system. Accordingly, Flood's lawsuit made him the first player to ever stand up for the rights of the players against the owners, and challenge their restraint of trade.

The only way to get around the clause was if a team traded a player to another team, or released him from his contract, which placed him in the open market where any other team could sign him.<sup>44</sup> Otherwise, a player's draft team would be the only team that he could ever play for during the duration of his career.<sup>45</sup> Some of the greatest players to ever step on a baseball diamond, such as Lou Gehrig, Mickey Mantle, Sandy Koufax, and Ernie Banks played their entire career for the team that drafted them, and not by choice; they were bound by the reserve clause system.<sup>46</sup> Essentially, star baseball players who lived in a free market, capitalist system did not have the right to seek employment elsewhere, unlike in any other profession. This is what Flood sought to change.

The Court ultimately rejected Flood's argument that baseball's antitrust exemption was a restraint on free trade.<sup>47</sup> In an infamous introduction written by Justice Blackmun that originally omitted the names of famous African-American baseball players in a long-winded soliloquy seeking to highlight baseball's greatest players, Blackmun ultimately refused to disturb the holding of *Federal Baseball*, allowing baseball to remain antitrust exempt.<sup>48</sup> Again, the Court claimed that baseball would be able to keep its antitrust exemption, and that only Congress would have the power to override this precedent through legislation.<sup>49</sup>

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 285

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

Justice Blackmun's argument, however, fails on a number of grounds. The United States Supreme Court has the inherent power to overturn a decision; it is not hamstrung by any claimed deference to the legislative branch. Flood, an African American, had only to look to the landmark decisions in *Brown v. Board of Education*<sup>50</sup> overturning *Plessy v. Ferguson*<sup>51</sup> to know that the Court has overturned decisions that were in fact incorrectly decided in the past. Justice Blackmun's argument that "settled expectations" in place in baseball should not be disrupted was flawed: for example, the Court could have ruled that in five years time there would be no reserve clause in future contracts signed by professional baseball players, and that in ten years time all players will become free agents, and so forth.

Such a ruling would have put Major League Baseball on notice for upcoming changes, allowing owners to adjust the business operations side of baseball and prepare for a future without a reserve clause, and the elimination of the antitrust exemption. The Court could have addressed this issue without the help of Congress, and resolved an inequity that has plagued baseball teams to this day. Flood's unsuccessful efforts were not for naught, as he paved the way for free agency in baseball, galvanizing the other players and creating awareness in the public eye about baseball's restraint on free trade. Because of Flood's efforts, today, players who reach six years of service time in the league are allowed to file for free agency.<sup>52</sup> Flood's efforts created an opportunity for players to negotiate a contract on the open market, something that Curtis Flood never had the opportunity to do during his own playing career.

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<sup>50</sup> 347 U.S. 483 (1954).

<sup>51</sup> 163 U.S. 537 (1896).

<sup>52</sup> *Reserve Clause* Baseball-Reference (last accessed May 2, 2017) [http://www.baseball-reference.com/bullpen/Reserve\\_clause](http://www.baseball-reference.com/bullpen/Reserve_clause)

## B. The Curt Flood Act of 1998

Congress eventually responded to the crisis of the baseball exemption in 1998. Named after Curt Flood and his tireless efforts to challenge baseball's reserve clause, the 1998 Curt Flood Act<sup>53</sup> granted baseball players the same antitrust rights afforded to professional athletes in other sports, leveling the playing field and stabilizing labor relations in the sport between players and owners after the disastrous 1994 player strike that led to the cancellation of the 1994 World Series.<sup>54</sup> However, the Act created a vacuum for six categories that still remain subject to the antitrust, namely (1) minor league baseball players; (2) organized minor league baseball; (3) "franchise expansion, location, or relocation," (4) conduct and agreements related to the Sports Broadcasting Act of 1961; (5) umpires and other employees of organized professional baseball; and (6) any conduct or agreements with persons not in the business of Major League baseball.<sup>55</sup>

Accordingly, although the Curtis Flood Act provided significant bargaining power for major league players, solidifying the strength of Major League Baseball's player union, which still remains today. However, the Act left franchise expansion and stadium relocation still within baseball's antitrust exemption.<sup>56</sup> This hole has allowed for contemporary issues with the Oakland A's, for example, to exist today. Congress limited the power of team owners to freely move into a new market if they so desire, limiting franchise relocation to a vote subject to other owners approval. Therefore, the failures of Congress and the Supreme Court to fully reverse baseball's antitrust exemption has left teams like Oakland A's with only one remaining legal remedy to solve their stadium and attendance crisis that has plagued them over the last two decades: litigation.

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<sup>53</sup> Curt Flood Act of 1998, 15 U.S.C. §26b (2012).

<sup>54</sup> Associated Press, *1994 strike was a low point for baseball*, ESPN (Aug. 10, 2004).  
<http://www.espn.com/mlb/news/story?id=1856626>

<sup>55</sup> 105 P.L. 297

<sup>56</sup> *Id.*

### C. Franchise Relocation

Before one is able to analyze the present day situation playing out in Oakland, it is instructive to examine how the Oakland A's, and many other west coast teams, came to life in the first place. Major League Baseball experienced a wave of franchise relocation in the 1950's and 1960's to many western cities in the United States.<sup>57</sup> As the economy grew, Americans headed out west in the mid 1950s, with baseball soon following due to the ease of travel made possible by commercial jets. These economic factors and technological factors together caused many teams to relocate. Accordingly, this fresh wave of cities in the new frontier allowed for baseball teams to sprout up everywhere in the country.<sup>58</sup> The moves of the Brooklyn Dodgers and New York Giants to California in 1958 opened up the floodgates of teams leaving the East Coast to bring baseball to the western states, including the transfer of the Kansas City A's to the Bay Area as the Oakland A's.

These relocations were permissible under Major League Baseball rules because these new areas where teams wished to relocate were not a part of any other team's existing territory. Therefore, unofficial precedent began in which teams could move their franchises, with the approval of the other owners in the league, if they moved into cities that did not already have a major league team. The notable exceptions to this unofficial rule included the markets that had enough population density to support more than one team, such as New York and Chicago, and eventually Los Angeles.

Teams in these cities are able to operate freely without infringing upon the other team's market share, and thus potential earning power, because they are in fact larger cities with a much larger population size that is able to provide revenue for two teams in the same city. In contrast,

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<sup>57</sup> Jack O'Connell, *Move West Opens Baseball to Nation*, MLB.com (Sep. 24, 2007) <http://m.mlb.com/news/article/2227235//>

<sup>58</sup> *Id.*

two teams in a small market such as St. Louis would be disastrous for both teams; neither would be able to effectively run a business and make a profit. The sheer lack of population would result in few fans attending games, and would be a tragic business decision for both the teams, and for baseball. If, however, a city is large enough to support more than one team, one may wonder whether or not it should be permissible to allow another competing team to move into that same market.

Unfortunately, the answer is not simple. Stadium issues in smaller cities can persist and create issues for some of teams who moved to these new cities either through relocation, or expansion. For example, the city of St. Petersburg, home of the Tampa Bay Rays, dealt with enormous hurdles in the late 1980's and early 1990's to bring a franchise into the Tampa Bay area. After twice losing out on a franchise relocating to Tampa Bay with the Chicago White Sox and San Francisco, St. Petersburg filed lawsuits against Major League Baseball for tortious interference, as well as another attempt to challenge baseball's antitrust exemption.<sup>59</sup>

Unfortunately for Tampa, as long as Major League Baseball maintained its antitrust status, it could thwart any attempt by a city to attract a team from another market, similar to the difficulties faced by the Oakland A's in their attempted move to San Jose. The fight ended up on Capitol Hill where a special committee reviewed Major League Baseball's antitrust status.<sup>60</sup> Ultimately, Congress took the side of Major League Baseball, and upheld their antitrust exemption once more.<sup>61</sup> Major League Baseball had once again won its fight against the judicial system and Congress by preserving its antitrust exemption. Fortunately for St. Petersburg, the

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<sup>59</sup> Jonah Keri, *THE EXTRA* 2%, 28 (2011).

<sup>60</sup> *Id.* at 29.

<sup>61</sup> *Id.*



city was awarded a franchise once Major League Baseball announced another wave of expansion in 1995.<sup>62</sup>

As a new small market team, the Rays, however, faced an even larger uphill battle, one that continues to plague a similar team, the Oakland Athletics, to this day. When a Major League franchise is situated in a low population density area, they are left at a disadvantage in their ability to try and make up the gap in their revenue streams compared to some of their larger-market counterparts. In baseball, revenue primarily comes from the ticket sales, based on attendance, and local television broadcasting rights, based on market size.<sup>63</sup>

To see how market size may affect a team's revenue, one could look at the Los Angeles Dodgers, who are situated in the second largest metropolitan area in the country and are able to draw over 3.7 million people to their games each year.<sup>64</sup> On the other hand, a team like the Tampa Bay Rays have managed to bring over 2 million fans to their stadium only once in their nearly twenty year history as a franchise.<sup>65</sup> Accordingly, Major League Baseball teams, especially those with lower revenue streams, will cry poor, and claim that turning a profit, and fielding a competitive team is next to impossible.

These claims have surged public opinion for new stadium deals, as the team claims that without a new, publicly funded stadium, the teams will have no choice but to move in order to turn a profit. Baseball is America's pastime; the last thing any politician wants to see happen to their city is a professional team leave for another market. In Chicago, one has to look no further

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<sup>62</sup> *Id.*

<sup>63</sup> Amy Fontinelle, *Major League Baseball's Business Model and Strategy*, Investopedia (Oct. 28, 2015) <http://www.investopedia.com/articles/personal-finance/062415/major-league-baseballs-business-model-strategy.asp>

<sup>64</sup> Los Angeles Dodgers Attendance, Baseball Reference <http://www.baseball-reference.com/teams/LAD/attend.shtml>

<sup>65</sup> Tampa Bay Rays Attendance, Baseball Reference <http://www.baseball-reference.com/teams/TBD/attend.shtml>

than the city's White Sox, who pushed state legislators to approve and a pay for a brand new stadium situated on the South Side that the Sox still play in to this day.<sup>66</sup>

However, independent studies by *Forbes* have concluded that such claims are overstated, as its investigators produced financial estimates and franchise values that go against the leagues claims.<sup>67</sup> Therefore, if an antitrust case ever went to court, the league would be forced to open its books, something that it desperately wishes to avoid.<sup>68</sup> MLB has managed to avoid that potential crisis up until the present day, when the city of San Jose eventually brought its lawsuit against Major League Baseball when the league prevented the Athletics from moving into an existing territory, held by the San Francisco Giants.<sup>69</sup>

#### **D. Economic Factors Affecting Franchise Relocation**

With baseball's antitrust exemption firmly set in place, in addition to the constant reliance on *stare decisis* in Supreme Court cases, as well as the lack of antitrust exemption legislation for franchise relocation by Congress has made moving a baseball franchise to another city a nearly impossible task. The most recent example of a successful franchise relocation in baseball occurred when the Montreal Expos moved to Washington D.C. for the 2005 season, in part due to the crumbling infrastructure of Olympic Stadium in Montreal.

Further, poor ownership management resulted in the team teetering on the brink of bankruptcy, which necessitated the other 29 teams in baseball to purchase the team so it could remain solvent.<sup>70</sup> Due to the massive declines in revenue from the lack of fan interest in the team, Major League Baseball decided that the Expos were the perfect candidates for relocation.

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<sup>66</sup> David Haugh, *White Sox saved for city in their own version of the Chicago way*, Chicago Tribune (May 22, 2016), <http://www.chicagotribune.com/sports/columnists/ct-cell-at-25-haugh-spt-0522-20160521-column.html>

<sup>67</sup> Jonah Keri, *THE EXTRA 2%*, 28 (2011).

<sup>68</sup> *Id.* at 28.

<sup>69</sup> Brandon Lowrey, *San Jose Takes MLB Antitrust Challenge to Supreme Court*, Law360 (Apr. 15, 2015), <https://www.law360.com/articles/643573/san-jose-takes-mlb-antitrust-challenge-to-supreme-court>

<sup>70</sup> Francie Grace, *Expos confirm move to D.C.*, CBS News (Sep. 29, 2004) <http://www.cbsnews.com/news/expos-confirm-move-to-dc/>

At the end of the 2004 season, the league approved the move of the Expos to Washington D.C., therefore becoming the Washington Nationals.<sup>71</sup>

All was not well, though, for the new franchise, due to the fact that issues quickly arose when the owner of the Baltimore Orioles, Peter Angelos, sought to protect Baltimore's television market.<sup>72</sup> When Major League Baseball, in a joint venture with the other 29 teams, purchased the Expos and allowed the franchise to move to the national's capitol, the distribution of the market share of future revenues had to be settled between the Washington Nationals, and the Baltimore Orioles, two cities that were only separated by forty miles.<sup>73</sup> This differs from the issue with Oakland, a franchise that is still privately owned, who were thus was not afforded the same protection and ability to relocate that was allotted to the Nationals when the Expo franchise was moved from Montreal to Washington, D.C.

Oakland did not have this protection because when Major League Baseball purchased the Expos, the goal was to make the franchise more solvent, with eventually higher revenue streams due to a more popular franchise in a new city. The game would grow then, and the sport would become more competitive, and profitable, for everyone involved. Unfortunately for Oakland, this priority was simply not as important.

After the Expos moved, the newly minted Nationals and Orioles worked out a deal where the Orioles held a majority partnership profit in the Mid-Atlantic Sports Network, or MASN,<sup>74</sup> which was a regional broadcasting network that aired both Nationals and Orioles games. The majority share partnership was a critical component for Peter Angelos and the Orioles before

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<sup>71</sup> Associated Press, *Expos finally found a new home*, ESPN, (Sep. 30, 2004).  
<http://www.espn.com/mlb/news/story?id=1891484>

<sup>72</sup> Francie Grace, *Expos confirm move to D.C.*, CBS News (Sep. 29, 2004) <http://www.cbsnews.com/news/expos-confirm-move-to-dc/>

<sup>73</sup> *Id.*

<sup>74</sup> Richard Sandomir, *The Market? Shared. The Network? Divided.* N.Y. Times (Aug. 18, 2014).  
[http://www.nytimes.com/2014/08/19/sports/baseball/masn-pits-orioles-against-nationals-after-years-of-coexistence.html?\\_r=0](http://www.nytimes.com/2014/08/19/sports/baseball/masn-pits-orioles-against-nationals-after-years-of-coexistence.html?_r=0)

they agreed to anything; with the rise of digital video recording and online streaming of television shows, live sports became the premier destination for advertisers to spend money to reach consumers.

Television network deals to broadcast live sports have become an absolute goldmine for teams, providing a key source of guaranteed revenue every season, regardless of how well the team's attendance is.<sup>75</sup> This revenue then allows for teams to sign free agents that they wouldn't have otherwise been able to afford, extend the contracts of their players, and be a generally more competitive team.<sup>76</sup> In 2014, for example, the Los Angeles Dodgers signed a massive 25 year, \$8 billion dollar broadcasting deal with Time Warner Cable.<sup>77</sup> It is clear that the ability to broadcast live sports has become a goldmine for every party involved, resulting in deals skyrocketing between teams and television networks worth hundreds of millions of dollars.<sup>78</sup> For the Orioles, having a majority share of the television network meant that they would have millions of dollars more to spend on free agents, stadium upgrades, or scouting, than their counterparts in the nation's capitol.

Angelos and the Orioles were rewarded for their concession of letting the Nationals move into their territory with a 90% ownership of the MASN network.<sup>79</sup> The 90% stake, however, would gradually be decreased to two-thirds ownership, along with total management control, as well as seventy five million dollars every season paid by the Nationals.<sup>80</sup> Although this was a steep price to pay for the Nationals' ability to broadcast games on Baltimore's television

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<sup>75</sup> Craig Edwards, *Estimated TV Revenues for all 30 MLB Teams*, Fangraphs (Apr. 15, 2016) <http://www.fangraphs.com/blogs/estimated-tv-revenues-for-all-30-mlb-teams/>

<sup>76</sup> *Id.*

<sup>77</sup> Bill Shaikin, *Dodgers officially announce deal with Time Warner Cable*, Los Angeles Times, (Jan. 28, 2013). <http://articles.latimes.com/2013/jan/28/sports/la-sp-dodgers-tv-20130129>

<sup>78</sup> *Id.*

<sup>79</sup> Eriq Gardner, *Baltimore Orioles Triumph in MLB Civil War over TV Money*, Hollywood Reporter (Nov. 4, 2015). <http://www.hollywoodreporter.com/thr-esq/baltimore-orioles-triumph-mlb-civil-837077>

<sup>80</sup> *Id.*

network, it allowed them a slice of an extremely valuable pie: live sports broadcasting.<sup>81</sup>

Therefore, for the first few seasons of the Nationals' existence, the profits flowed heavily towards the Orioles, thereby favoring their team, and providing for a larger share of current and future revenue to be spent on improvements for their team, rather than the Nationals.

Essentially, the Orioles' saw a significant advantage in the mid 2000's when Major League Baseball allowed the Nationals to move into the Orioles' "market" because the Orioles were awarded the right to telecast the Nationals' game at a substantial discount for the first six season from 2005 to 2011, only after which the Orioles would have to pay the Nationals "fair market value."<sup>82</sup> Fair market value has become a highly litigated issue in recent years, as live sports broadcasting has become the premier source of advertising dollars for television networks, resulting in an explosion in value of TV deals for sports teams.<sup>83</sup>

Naturally, contentious litigation ensued between the Nationals and Orioles after 2011, when the Nationals contended that the "fair market value" should be in the range of \$109 million, while the Orioles believed it was only worth \$34 million.<sup>84</sup> Independent arbitrators ultimately ruled that Washington should be awarded fees reaching upwards of 66 million.<sup>85</sup> The decision was appealed, vacated, and litigation is still pending as of May of 2017. Similar to Oakland and the Tampa Bay Rays, Nationals' officials have stated that the lack of revenue from

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<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Craig Edwards, *Estimated TV Revenues for All 30 MLB Teams*, Fangraphs (Apr. 25, 2016)

<http://www.fangraphs.com/blogs/estimated-tv-revenues-for-all-30-mlb-teams/>

<sup>84</sup> Patrick Reddington, *Washington Nationals' ongoing dispute with MASN, Baltimore Orioles over TV rights fees affecting spending*, Federal Baseball (Jan. 27, 2016).

<http://www.federalbaseball.com/2016/1/27/10838612/washington-nationals-ongoing-dispute-with-masn-baltimore-orioles-affecting-spending>

<sup>85</sup> *Id.*

broadcasting deals has affected their ability to sign free agents, resulting in an inability to compete on the same level as other teams in the league.<sup>86</sup>

This illustrates the length that teams will go to protect what they believe to be their market share, and the revenue they feel is rightfully their own. Teams would not be dealing with high costs for attorney fees if it was something trivial on the line, but when there are millions of dollars at stake, teams will fight to the bitter end to protect what they believe is rightfully theirs. This exact situation has played out in Oakland, who have been involved in a bitter battle with San Francisco to move the team to San Jose. This issue may result in one asking how has the Washington Nationals successful relocation affected the Oakland Athletics' ability to move their team?

#### **E. "The Nationals Effect" on Oakland**

The Athletics have long claimed to be hamstrung by their stadium situation, mainly owing to the fact that because they share a lease and a stadium with the Oakland Raiders.<sup>87</sup> Further, even with the Raiders move to Las Vegas being announced in early 2017,<sup>88</sup> Oakland ownership has long complained of that their current stadium lacks the modern amenities to remain a viable location to house a professional baseball team. Oakland has argued that because of these issues, it has prevented the team from fielding a competitive team in comparison to the rest of Major League Baseball, which is partially true; the Oakland A's have consistently ranked in the bottom of payroll of Major League teams since 2000.<sup>89</sup> In 2016, for example, the Los Angeles Dodgers, with their new TV broadcasting deal raking in millions of dollars, had an

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<sup>86</sup> *Id.*

<sup>87</sup> Elliot Almond, *A's spending Millions to find best site for new Oakland ballpark*, Mercury News (Feb. 19, 2017), <http://www.mercurynews.com/2017/02/18/as-spending-millions-to-find-best-site-for-new-oakland-ballpark/>

<sup>88</sup> Jill Disis, *NFL approves Raiders' move to Las Vegas*, CNN Money (Mar. 27, 2017), <http://money.cnn.com/2017/03/27/news/nfl-raiders-las-vegas-move/>

<sup>89</sup> MLB Team Payrolls, <http://www.stevetheump.com/Payrolls.htm>

opening day payroll of over \$200 million, while the Oakland A's ranked fourth to last with a payroll barely over \$80 million.<sup>90</sup>

Because of the systemic issues plaguing Oakland's stadium, the team has been seeking to move the franchise to San Jose, across the bay from Oakland, and into a wealthier demographic full of Silicon Valley elites. If the team was permitted to move to San Jose, they argue, they would have the ability field a higher payroll based on larger attendance figures from the citizens of San Jose in comparison to those in Oakland. Therefore, they would be able to field a more competitive team than the one they currently have in Oakland.

However, the league has rebuked this attempted move,<sup>91</sup> as Oakland was denied the opportunity to move the franchise to San Jose by the Commissioner and the other 29 teams in the league who vote when franchises wish to move. The San Francisco Giants claimed that the city of San Jose is part of their franchise's territory, which Oakland ceded to San Francisco in the 1990s when the Giants attempted, and failed to build a stadium in the San Jose Area.<sup>92</sup>

Without the necessary votes needed to move their franchise, the A's have been unable to relocate. Other teams, based on their relationship with the Giants ownership group, have refused to side with Oakland in their attempt to move into the San Francisco Giant's territory. This differs from what occurred in the Expos move to D.C., because Major League Baseball itself purchased the team and had the authority to move the franchise into an area where it would be more lucrative, i.e. Washington, even though it was within Baltimore's territory. The "Nationals Effect" of baseball, therefore, has never benefitted the Oakland A's or even the Tampa Bay

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<sup>90</sup> *Id.*

<sup>91</sup> Associated Press, *MLB Denied Oakland's Move to San Jose in June*, USA Today (December 8, 2013), <http://www.usatoday.com/story/sports/mlb/2013/12/08/mlb-denied-oaklands-san-jose-move-request/3914285/>

<sup>92</sup> Associated Press, *San Jose Sues MLB Over A's Vote*, (June 8, 2013), [http://www.espn.com/mlb/story/\\_/id/9399631/san-jose-sues-mlb-vote-oakland-athletics-potential-move](http://www.espn.com/mlb/story/_/id/9399631/san-jose-sues-mlb-vote-oakland-athletics-potential-move)

Rays; two teams who wish to move out of their stadiums and cities that they are currently situated in.

With no other routes available for the Oakland Athletics due to the lack of a viable area in the city of Oakland for a new stadium, the city of San Jose sued Major League Baseball claimed an antitrust violation.<sup>93</sup> San Jose, in challenging baseball's antitrust exempt status, argued that the exemption was limited only to the reserve clause, a position taken up in *Piazza v. MLB*.<sup>94</sup> The *Piazza* case began after Major League Baseball blocked the San Francisco Giants owner from selling the team to Vince Piazza, who planned to move the team to St. Petersburg prior to the grant of the Rays franchise in the mid 1990's.<sup>95</sup>

Major League Baseball argued in opposition of San Jose that the broad, all encompassing antitrust exemption shields all aspects of baseball from antitrust litigation, including league structure and relocation, which judicial precedent has held, and the Curt Flood Act prescribed.<sup>96</sup> Ultimately, the Courts sided with Major League Baseball once again upholding the antitrust exemption and leaving the city of San Jose and the Oakland A's franchise with no hope for an improved future.<sup>97</sup> When San Jose petitioned for the leave to appeal to the United States Supreme Court, they failed once more.<sup>98</sup>

#### **F. Criticism of Oakland's Payroll**

Public awareness of the issue of the disparity in team payroll in baseball has come into the spotlight in recent years, as the film *Moneyball* created an understanding of baseball payroll

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<sup>93</sup> Lawrence Hurley: *Supreme Court won't hear challenge to baseball antitrust immunity* Reuters (October 5, 2015). <http://www.reuters.com/article/us-usa-court-baseball-idUSKCN0RZ1JV20151005>.

<sup>94</sup> 831 F.Supp 420 (1993).

<sup>95</sup> *Id.*

<sup>96</sup> Lawrence Hurley: *Supreme Court won't hear challenge to baseball antitrust immunity* Reuters (October 5, 2015). <http://www.reuters.com/article/us-usa-court-baseball-idUSKCN0RZ1JV20151005>.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*



inequality like never before.<sup>99</sup> However, some critics have argued that the fault of the Athletics, and their stadium issues in contemporary sports, is not the result of legal precedent constraining their ability to contend with other teams, but rather the frugality of their owner.<sup>100</sup> In an effort to combat the disparity of the rich teams and the poor teams, Major League Baseball instituted a program known as “revenue sharing,” in 1996.<sup>101</sup>

Under this revenue sharing scheme, every professional team pays 31% of their annual net local revenue into the coffers of Major League Baseball, which is comprised of money coming from gate receipts, concessions, merchandise sales, etc.<sup>102</sup> The money is then equally distributed amongst the 30 teams in an attempt to even the playing field between the large market teams and the small market ones.<sup>103</sup> Due to the fact that large market teams have a much greater local revenue stream than small market teams, the large market teams still make a profit and are not squeezed dry by the revenue sharing program. On the other hand, poorer teams receive an influx of cash that can be used to sign free agents, extend their own players, and move towards fielding a competitive team. In 2009, for example, the New York Yankees paid out over \$100 million in revenue sharing, all while winning the World Series; the small market Tampa Bay Rays, on the other hand, received \$30 million.<sup>104</sup>

For a small market team like the Oakland A’s, it is clearly in their best interest to claim that they are unable to turn a profit and that they need a new, publically funded stadium in order

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<sup>99</sup> The HR Staff, *Oscars 2012, Complete Winners List*, Hollywood Reporter (February 26, 2016) <http://www.hollywoodreporter.com/news/oscar-winners-list-academy-awards-295127> (The film adaption of *Moneyball* was critically acclaimed, grossing over \$100 million dollars, and garnering six Academy Award nominations, including Best Picture, Best Actor for Brad Pitt, and Best Supporting Actor for funnyman Jonah Hill of all people)

<sup>100</sup> Lindsey Adler, *MLB will no longer allow the Oakland A’s to pretend to be a small-market team*, Deadspin (Dec. 1, 2016) <http://deadspin.com/mlb-will-no-longer-allow-the-oakland-as-to-pretend-to-b-1789565005>

<sup>101</sup> Fangraphs Staff, *Revenue Sharing*, Fangraphs, at <http://www.fangraphs.com/library/business/revenue-sharing/> (last visited December 13, 2016)..

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> Jonah Keri, *THE EXTRA 2%*, 28 (2011). (recheck citation format)

to turn a profit and field a competitive team. Until then, they are able to quietly pocket millions each season from teams like the Yankees, and reject any notion of funneling those revenue sharing dollars back into the product on the field. Even with the influx of cash that the Oakland A's have received every year, they have not been able to top more than an average of 25,000 fans on a per game basis since 2005, even when the team made three consecutive playoff appearances from 2012-2014.<sup>105</sup>

However, at the tail end of 2016, Major League Baseball's Collective Bargaining Agreement expired, and with that came a wave of new rules and regulations to combat this issue of teams not spending the money that they have been receiving in revenue sharing to increase the performance of their on field product. The biggest change affecting Oakland was the news that revenue sharing for the team would be phased out within 5 years, owing to the fact that Oakland, by terms of market size in the Bay Area, was considered one of the largest markets in baseball, and thus would no longer be afforded revenue sharing.<sup>106</sup> It remains to be seen how this will impact Oakland over the next few seasons, but it is certain that a loss of millions of dollars each year will adversely affect the team, or the fans, in some way. The team will either have to decrease their player payroll to offset the loss of money they receive in revenue sharing, or they will be forced to increase ticket prices to make up the difference. Raising ticket prices when the team is not contending is usually a tough sell to a fan base, but decreasing payroll and spending less on players will likely lead to a team that is less successful. This would also likely alienate a fan base, making Oakland's efforts to field a competitive team in a new stadium even more difficult.

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<sup>105</sup> Claire McNear, *The A's Desperately Need New Ownership*, The Ringer (August 4, 2016), <https://theringer.com/oakland-athletics-need-new-ownership-fccb5685750a#.wvwn0d7he>.

<sup>106</sup> Evan Drellich, *Astros' Payroll doesn't measure up to market size*, Houston Chronicle, (December 6, 2015), <http://www.houstonchronicle.com/sports/astros/article/Astros-payroll-doesn-t-measure-up-to-market-size-6680180.php>.

However, some critics have argued that it may have no impact on the team at all, because there is no direct proof that the Oakland A's are even funneling the funds that they receive from revenue sharing back into the product on the field.<sup>107</sup> Essentially, there is no proof that this will adversely affect the team at all, they argue, because Oakland has consistently had a low payroll every year, struggling to always make do with less.<sup>108</sup> It remains to be seen how these changes will effect the team, as many baseball pundits will closely be paying attention to the efforts of the Oakland A's management to see how they will respond to these changes.

### **III. The Future of Stadium Relocation in Baseball**

Almost one hundred years after baseball received its antitrust exemption, issues have continually risen for both the courts and professional baseball teams surrounding what amounts to anti-competitive conduct that would be illegal in any other competitive industry, yet is permissible in professional baseball. Major League Baseball has repeatedly said that they hope to expand into new markets within the next decade, which would potentially allow for the league to create new fan bases in different parts of the country, and potentially the world if they expand into Mexico.<sup>109</sup> However, it may be extremely difficult to justify expanding and awarding new stadiums in new cities to brand new teams when there are teams saddled with unfortunate stadium issues.

To avoid further litigation with San Jose and Major League Baseball, as well as the Washington Nationals and Baltimore Orioles, baseball will need to locate areas that are viable for teams that will not infringe upon other teams and their territories. If Oakland is not allowed to move into San Jose, baseball could simply keep the status quo and force Oakland to find a viable

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<sup>107</sup> Lindsey Adler, *MLB will no longer allow the Oakland A's to pretend to be a small-market team*, Deadspin (Dec. 1, 2016) <http://deadspin.com/mlb-will-no-longer-allow-the-oakland-as-to-pretend-to-b-1789565005>

<sup>108</sup> *Id.*

<sup>109</sup> Jay Jaffe, *MLB Expansion? These Cities in U.S. and abroad makes sense* Sports Illustrated (Apr. 22, 2016). <http://www.si.com/mlb/2016/04/22/mlb-expansion-montreal-mexico-city-charlotte-portland>.

location for a stadium within Oakland, which is what Major League Baseball has pushed for Oakland to do.<sup>110</sup> However, this may not be in baseball's best interest to keep a team in a city where it is clearly not succeeding financially, or on the field in terms of team performance.

When the Washington Nationals officially moved from Montreal to Washington D.C., they were already a bona fide organization that had players from the Expos essentially putting on a new uniform and moving to a different city. However, a move to a new city did not change things for the team overnight, as the team spent years mired in mediocrity, struggling to field a contending team because of the difficulties new teams face when a franchise moves. It takes years to build a fan base and create generation of fans who will embrace a new team and support them. One needs to only ask fans of the 2016 World Series Champions, the Chicago Cubs, how they became fans, and undoubtedly one would be regaled with tales of how they were raised Cubs fans because their parents were Cubs fans, and then how they raised their own children as Cubs fans.<sup>111</sup>

The best solution for Major League Baseball would be to focus on finding viable locations in the same general area for teams considering a move, rather than uprooting a team and moving them across the country. This could best be served by studying a team's market, and finding a location that is close to public transportation, near a large population center, and would create an easy path for fans to attend games on a nightly basis.<sup>112</sup> This is one of the issues that the Tampa Bay Ray's franchise has faced since their inception, as their stadium sits more than twenty miles away from the downtown area without public transportation to easily reach the

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<sup>110</sup> John Hickey, *What Does A's news mean for stadium prospects?* The Mercury News, (December 2, 2016) <http://www.mercurynews.com/2016/12/01/a-look-at-what-phasing-out-of-revenue-sharing-means-to-as/>

<sup>111</sup> *Cubs Championship Ring Bearer Contest*, Cubs.com (Last accessed May 2, 2017). [http://chicago.cubs.mlb.com/chc/fan\\_forum/cubs-ring-bearer/](http://chicago.cubs.mlb.com/chc/fan_forum/cubs-ring-bearer/)

<sup>112</sup> Daniel Russell, *Possible Rays stadium location development Channelside*, SB Nation (Jan. 14, 2014) <http://www.draysbay.com/2014/1/24/5137266/rays-stadium-location-channelside-vinik-baker-gold-crown-Tampa-TIF-money>

stadium and surrounding area.<sup>113</sup> Finding a healthy medium between being close to public transportation, and being in an area with large parking lots would provide a way for thousands of fans to come to a particular area for a home game, boosting that local area's economy and creating a sort of civic pride in a city's team.<sup>114</sup>

If baseball chooses not to intervene and find viable stadium locations for teams such as Oakland or Tampa Bay in their current markets, another solution is to lobby Congress to override the portion of the Curtis Flood Act leaving stadium relocation within baseball's antitrust exemption. However, the chances of this happening are minimal, based on the lobbying power of Major League Baseball. The City of St. Petersburg wasted years trying to work with Congressional committees that did not seem interested in overturning the antitrust exemption. Additionally, baseball has a stronghold on this ultimate power, and it is unlikely that they would yield it to allow for a team to move their stadium.

Instead, the best solution for the city of San Jose is something akin to what occurred with the Washington Nationals and the Baltimore Orioles. San Francisco, for example, could be awarded a disproportionate share of a broadcasting deal, similar to what the Orioles were awarded. In return, the Oakland A's could leave their stadium, and move to a wealthier demographic in San Jose, which sits in the heart of Silicon Valley. Major League Baseball approved of an identical move with the Montreal Expos, so there is precedent for allowing the Athletics to also relocate. This potentially allows for a deal that would be acceptable to all parties involved. Oakland may lose a share of broadcasting rights for a period of time, but they would be allowed to move out of Oakland and into San Jose, with a new stadium that San Jose has said

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<sup>113</sup> *Id.*

<sup>114</sup> Joe Mock, *Tropicana Field, All Dome and Glome*, USA Today (April 6, 2013) <http://www.usatoday.com/story/sports/mlb/rays/2013/04/06/tampa-bay-rays-tropicana-field-no-30-rank-mlb-ballparks/2058289/>.

that they would build for the team. The San Francisco Giants, on the other hand, would lose part of their “territory,” while at the same time profiting from being awarded a disproportionate amount of Oakland’s broadcasting deal. This is in effect free money by simply allowing a team to move south down the bay into a region that is likely split amongst Giants and Oakland A’s fans already.

#### **IV. Conclusion**

Major League Baseball will continue to experience issues with franchises wishing to relocate and upgrade their stadiums as long as the sport exists. Until Congress or Major League Baseball decides on a system for teams to move into markets more suitable for profitable revenue streams, small market franchises such as the Oakland A’s and Tampa Bay Rays will be at a disadvantage compared to larger market teams in bigger metropolitan areas. Major League Baseball does not have a salary cap, meaning that teams such as the Los Angeles Dodgers and the New York Yankees can have enormous payrolls compared to small market teams like the Kansas City Royals, Oakland Athletics, and Tampa Bay Rays.

Based on the history of the game, it is clear that Major League Baseball is unconcerned about this discrepancy between the richest and poorest teams. It would be in the best interest to find viable stadiums that will lead to larger crowds and thus larger revenues for the sport. As a revenue sharing sport, Major League Baseball is doing itself a disservice by restricting these poorer teams from moving to new stadiums. Major League Baseball has enough power to push for a move of the Oakland A’s to San Jose, as well as fighting to assist the Tampa Bay Rays in finding a new location for their franchise in the Tampa Bay area. Assisting these two franchises would undoubtedly lead to higher fan attendance, higher payrolls, and another competitive team

in the American League to compete against the Boston Red Sox and the New York Yankees, two of the most popular teams in the sport.

Yet, Major League Baseball and its owners have pushed for lower costs for the players and their salaries even while revenue skyrockets. After peaking at a little more than 56% in 2002, present day Major League Baseball salaries account for less than 40% of league revenue, a decline of nearly 33% in just over 14 years.<sup>115</sup> Additionally, ownership with the new Collective Bargaining Agreement managed to achieve a de-facto “soft” salary cap for exceeding the luxury tax threshold, a figure where teams are required to pay a percentage based tax depending on how high over the threshold they spend on payroll. For the upcoming 2017 season, this figure is \$195 million dollars, and teams that continuously go past this figure, which will increase incrementally over the next few seasons, could face a penalty charge of potentially 92%.<sup>116</sup>

Essentially, by having a soft salary cap in place, teams have less incentive to spend over this salary cap amount, which in turn artificially suppresses player salaries, and therefore allows owners to pocket more of the revenue, all because they are owners of a professional sports team. It is paradoxical for Major League Baseball, it seems, to not assist the Oakland A’s and Tampa Bay Rays in their quest for new stadiums. On one hand, assisting the two franchises would lead to an incentive to assist the Oakland A’s and Tampa Bay Rays in their fight for a new stadium, because this would only lead to higher revenues, and thus a potential for higher player payroll, a consequence Major League Baseball and its owners, by their actions, seem to oppose.

It is inarguable that baseball first and foremost operates as a business. While it is a great public relations move every time a Derek Jeter or Cal Ripken Jr. spends their entire career with

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<sup>115</sup> Dave Brown, *MLB players average salary tops \$4 million, but there’s a catch*, CBS Sports (March 31, 2015) <http://www.cbssports.com/mlb/news/mlb-players-average-salary-tops-record-4-million-but-theres-a-catch/>.

<sup>116</sup> Grant Brisbee *How the new MLB collective bargaining agreement changes baseball* SB Nation, (December 1, 2016) <http://www.sbnation.com/2016/12/1/13806488/mlb-new-cba-collective-bargaining-agreement-luxury-tax>.

the team that drafted them, hard decisions are made all the time and baseball operates to create a profit for the owners. However, when the drive for profits gets in the way of expanding the game of baseball and incentivizing a culture of winning and fielding a successful team, then support for the game declines. One needs to look no further than the case of the Florida Marlins, whose principal owner, Jeffrey Loria, who has long been regarded as one of the most frugal owner in the game, will turn an initial \$158 million investment in the team into a profit that reaches the billions, as he is set to sell the team for \$1.6 billion this year.<sup>117</sup> Loria goes to show that there is no incentive to field a winning club when team value is skyrocketing and ownership groups are permitted to pocket millions in revenue sharing.

Unfortunately, because the nation's pastime is tilting towards its goal of increasing the net profit to the league and the team owners, while simultaneously decreasing and suppressing player salaries and raising ticket prices for the fans, baseball will face a real struggle in the next decade to see how it will grow and develop as a worldwide game. If profit and greed were to be placed aside for a split moment, and if Major League Baseball actively attempted to help small market teams relocate and improve their ability to contend, revenue and global awareness of the sport would increase, and the sport of baseball itself would prosper. Until that day comes, it will likely be business as usual for the rich teams, and economic hardship for the poor ones.

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<sup>117</sup> Sam Miller, *What does Jeffrey Loria get for mishandling Marlins? Pure profit* ESPN (February 10, 2017) [http://www.espn.com/mlb/story/\\_/id/18658184/what-does-jeffrey-loria-get-mishandling-miami-marlins-pure-profit](http://www.espn.com/mlb/story/_/id/18658184/what-does-jeffrey-loria-get-mishandling-miami-marlins-pure-profit)